

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 111 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
1 to 5 = NO

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SUDHIR I NANAVATI

Versus

STATE OF GUJARAT

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Appearance:

Mr. K.S. Nanavati, Counsel, with  
MR VIVEK BAROT for Petitioners  
Mr. K.P. Rawal, APP, for Respondent No. 1  
MR SURESH S PATEL for Respondent No. 2

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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 20/04/98

ORAL JUDGEMENT

The petitioners have filed this Special Criminal Application under Article 226 of the Constitution of India, read with Section 438 of the Code of Criminal Procedure ('Code' for short), to quash the complaint, registered at Navrangpura Police Station, being C.R.

No.II-3075 of 1998, filed by respondent No.2, against the petitioners, for the offences punishable under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989 ('Act' for short) and Sections 506(1) and 114 of the Indian Penal Code.

It is averred in the present petition that petitioner No.1 is the Honorary Secretary of Gujarat Law Society, which is an educational institution established way back in 1960, and is running various educational institutions wherein numerous students right from primary to post-graduate level are studying. Petitioner No.2 is the Director of the said educational institution and he has been active organiser of the said institution. Petitioner No.3 is the office superintendent who has always been the greatest support to petitioners Nos. 1 and 2 in highlighting and upgrading the institution. The Gujarat Law Society decided to upgrade its image by constructing various new buildings for newer fields of education, wherein, the hut of the alleged tenant namely, Mangabhai Chhaganbhai Jhapadia (respondent No.2 herein) came in their way, and created hurdles. Respondent No. 2 is serving with the Gujarat Law Society as sweeper and is provided with a space, wherein, a hut is situated. No rent is recovered by the Society for the said hut and it is only provided to respondent No.2 by way of 'gratis', as he is serving as sweeper in the Society.

Respondent No.2 filed H.R.P. Suit No.1835 of 1997 in the Small Causes Court, Ahmedabad, inter alia, contending that he was tenant of the premises. Respondent No.2 also prayed for injunction restraining the Society from evicting him from the said premises. Injunction application (Exh.5), filed by respondent No.2 came to be rejected by order dated January 23, 1998 passed by the learned Judge, Court No.3, Small Causes Court, Ahmedabad. On his injunction application being rejected by the Small Causes Court, Ahmedabad, respondent No.2 lodged a complaint in the Navrangpura Police Station against the petitioners on February 10, 1998. In the complaint, it is alleged that the incident took place prior to one month or thereabout, of filing of the complaint, wherein, three persons, i.e., the petitioners came together and abused respondent No.2 by uttering words that, "Harijans have not improved and they have become head-strong". The petitioners also abused respondent No.2 by uttering words that, "Harijans should not be employed in the employment and the Government has unnecessarily given undue importance to the Harijans."

Mr. K.S. Nanavati, learned Senior Counsel appearing for the petitioners, has submitted that there is no assertion or allegation in the complaint that the words to humiliate the complainant were uttered by the petitioners in a place within 'public view'. In the complaint, it is not stated that at what time the petitioners came and abused respondent No.2. It is also not stated that when the petitioners uttered those words; who were present at that time; and whether the said words were uttered within 'public view'. In support of this argument, the learned Senior Counsel for the petitioners cited the judgment of the Supreme Court in the case of Chandra Poojari vs. State of Karnataka, reported in 1998 CRI. L.J. 53.

From a perusal of the complaint, it is evident that the complaint is filed with oblique motive to stall eviction of respondent No.2 from the premises, which has been allotted to him, as he is serving with the Society. Since respondent No.2 has failed to get an injunction order in his favour, the complaint is apparently filed making serious allegations against the petitioners for the offences punishable under the Act, which are non-bailable offences. Admittedly, respondent No.2 was allowed to use the premises in question as a licensee, as he is serving as peon with the Society. In my view, the allegations made in the complaint are totally absurd and do not, prima facie, constitute any offence under the Act, since the complaint suffers from the vice of inherent improbable version given by the complainant.

Further, in this case, there is no assertion in the complaint that the incident had taken place in a public view. To attract the provisions of Section 3(1)(x) of the Act, it is necessary that it should be in a place where public could view the incident. Reading the complaint, these ingredients are found missing. Therefore, in my opinion, the complainant has filed this complaint to use it as a lever to harass the petitioners who are office-bearers of the society. It should not be forgotten that the Society is engaged in the field of imparting education and is running so many faculties for the said purpose. There was no reason for the petitioners to utter those abusive words to humiliate respondent No.1.

In the complaint, it is mentioned that the petitioners have committed offence punishable under Sections 506(1) and 114 of the Indian Penal Code. The ingredient of Section 506(1) of Indian Penal Code, which

defines criminal intimidation, is also wanting. Further, the charges under Section 506(1) of the Indian Penal Code are incidental to the main charge and an off-shoot. Therefore, viewed from any angle, no requirement to constitute any offence as alleged by respondent No.2 is satisfied.

Once on reading the complaint, if it clearly appears to the Court that there are inherent improbabilities in the version as narrated by the complainant and the accused in all probabilities has been falsely framed up and made to victimise, then in that case it is the duty of the Court to save and protect accused from being unnecessarily humiliated and subjected to the agonies and inconvenience of trial. The extraordinary power of quashing the proceedings enshrined in Section 482 of the Code is undoubtedly required to be sparingly used but when ends of justice so imminently warrants that extraordinary inherent power of High Court becomes and accordingly enjoins extraordinary duty and obligation upon the Court to exercise the same without any feeling of hesitation.

It is settled that High Court can exercise its power of judicial review in criminal matters. In the case of State of Haryana v. Bhajan Lal, reported in 1992 Supp (1) SCC 335, the Supreme Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under S.482 of the Code which it said could be exercised by the High Court either to prevent abuse of process of any Court or otherwise to secure the ends of justice. While laying down certain guidelines where the Court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the Courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. (See: AIR 1998 Supreme Court 128: M/s. Pepsi Foods Ltd. v. Special Judicial Magistrate).

In my view, as per the guidelines laid down by the Supreme Court in the case of Bhajan Lal (supra), allegations made in the complaint are so absurd and inherently improbable on the basis of which no prudent

person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. Further, the complaint filed by respondent No.2 is manifestly attended with mala fide, and the same is malicious with an ulterior motive for wreaking vengeance on the petitioners with a view to spite them due to private and personal grudge.

In over all view of the matter, in my opinion, the complaint does not establish ingredients of offence under the Act and it is a sheer abuse of process of court. In the facts and circumstances of the case, in order to secure the ends of justice, the complaint requires to be quashed.

As a result of foregoing discussion, the petition is allowed. The complaint, registered at Navrangpura Police Station, being C.R. No.II-3075 of 1998, filed by respondent No.2, against the petitioners, for the offences punishable under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989 and Sections 506(1) and 114 of the Indian Penal Code, is quashed and set aside. Rule is made absolute.

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(swamy)